



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Schmidt Manufacturing, Inc.

File: B-225217

Date: November 24, 1986

DIGEST

General Accounting Office will not review a contracting agency's affirmative determination of responsibility unless there is a showing that the determination may have been made fraudulently or in bad faith by the contracting officials or that definitive responsibility criteria in the solicitation have not been applied properly. Protester fails to make any reasonable showing of bad faith where protester merely makes unsupported statement that awardee was found responsible despite negative preaward survey recommendation based on contracting agency's desire to make award before funds for the contract expired.

DECISION

Schmidt Manufacturing, Inc. protests the award of a contract to Maltby Tank and Barge, Inc. under invitation for bids (IFB) No. DAAC83-86-B-0018, issued by the Army for a plastic media blasting system. Schmidt challenges the Army's determination that Maltby is a responsible firm. We dismiss the protest.

According to Schmidt, Maltby was the low bidder after bids under the IFB were opened on September 11, 1986. A preaward survey then was performed which recommended that award not be made to Maltby. The contracting officer decided not to follow the preaward survey recommendation, however, and made award to Maltby on September 30.

Schmidt argues that it was improper to make award to Maltby in view of the negative recommendation in the preaward survey report. Further, Schmidt contends that the contracting officer's determination that Maltby is responsible and the subsequent award were based solely on the Army's desire to make award under the IFB before the end of the fiscal year on September 30, when the funds for the contract would expire.

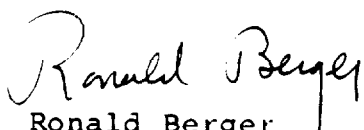
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In addition, Schmidt argues that Maltby should have been found nonresponsible because one of Maltby's major suppliers is involved in a patent infringement suit brought by Schmidt which, if successful, will eliminate the firm as a source of supply for Maltby.

Our Office will not review an affirmative determination of responsibility unless there is a showing either that the determination may have been made fraudulently or in bad faith by the contracting officials, or that definitive responsibility criteria in the solicitation have not been applied properly. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1986); Fujinon, Inc., B-221815, Jan. 30, 1986, 86-1 CPD ¶ 112. Neither showing has been made here. First, there is no indication, and Schmidt does not contend, that the IFB contained definitive responsibility criteria which were improperly applied. Further, when a protester alleges bad faith or fraud on the part of contracting officials, some reasonable showing beyond a bare allegation is necessary before we will consider such a complaint. M.G. Technology, Inc., B-222438, May 29, 1986, 86-1 CPD ¶ 503.

Here, to the extent Schmidt argues that the affirmative responsibility determination was made in bad faith based on the Army's desire to award a contract before the end of the fiscal year, Schmidt has failed to make any reasonable showing to support this allegation. Schmidt merely states, with no further explanation or supporting information, that the Army was motivated by a desire for an expeditious award. Even if that is true, such motivation, by itself, does not indicate that the affirmative responsibility determination was based on anything other than a conclusion that Maltby could do the job. In this regard, and contrary to Schmidt's assertion, the contracting officer was not required to follow the negative recommendation in the preaward survey report. The final determination regarding a proposed contractor's responsibility rests with the contracting officer, whose decision is based on an evaluation of the recommendations in the preaward survey report as well as other available information. Bellevue Bus Service, Inc., B-219814, Aug. 15, 1985, 85-2 CPD ¶ 176.

Since Schmidt has failed to make the showing required for our Office to review the Army's affirmative responsibility, we dismiss the protest without requiring the submission of an agency report. 4 C.F.R. § 21.3(f).



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